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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,910	08/07/2003	John Butler	08203.0031	7825
22852	7590	12/04/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER	
			YANG, ANDREW	
			ART UNIT	PAPER NUMBER
			3775	
			MAIL DATE	DELIVERY MODE
			12/04/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/635,910

**Applicant(s)**

BUTLER ET AL.

**Examiner**

ANDREW YANG

**Art Unit**

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 69-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 69-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :1/29/2004, 12/21/2007, 5/7/2008.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's arguments are found to be persuasive and the Restriction Requirement mailed on June 12, 2008 is hereby withdrawn.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 69-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimomura et al. (U.S. Patent No. 6100154) in view of Bimbo et al. (U.S. Patent No. 6551270).

Shimomura et al. discloses a surgical device 100b having a longitudinal axis, a distal ring 112, and a proximal ring 11. A wound retracting sleeve 110 extends between the proximal ring 11 and the distal ring 112. It can be construed that the axial extent of the sleeve 110 is shorter in a retracting configuration than in an insertion configuration since distal ring 112 is deformed from its expanded state to a less expanded state,

thus loosening the sleeve material, once in an tissue retracting state, the ring 112 is allowed to expand to its original state, thus tightening the material and shortening the overall length of the sleeve (column 5, lines 23-27). A sealing member 13 is coupled to the proximal ring 11, and having an access way consisting of a iris valve. Shimomura et al. fails to disclose the sealing member having three access ways located an axial distance proximal the proximal ring the access way having an iris or lip seal, the sealing member releasably coupled to the proximal ring, and rotatable.

Bimbo et al. teaches a surgical device 10 having a longitudinal axis having a distal end 18 and a proximal end 14. A wound retracting sleeve 12 extends between the proximal and distal ends. Proximal end 14 has a ring member as seen in the figure below.

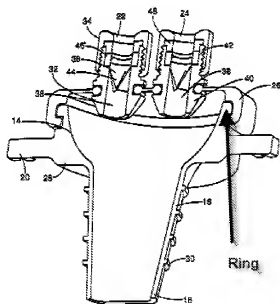


FIG. 3

A seal member 26 is coupled to the proximal ring and it can be construed that the sealing member is capable of being removed from the proximal ring and capable of being rotate. The sealing member 26 having two access ways 22, 24, it is noted that in an alternate embodiment, the sealing member can have three access ways 90, 92, 94, each having a lip seal 96. The access ways 90, 92, 94 can be manipulated with respect to one another (column 9, lines 30-35) and since the sleeve member tapers toward a smaller diameter, manipulating the access ways to allow tool members to go through will cause the central axis of each access way to converge. The advantage of the device of Bimbo is so a surgeon can use one or more instruments through the same incision while maintaining a gas tight seal to maintain the insufflation of the desired cavity (column 3, lines 45-50). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Shimomura et al. with the sealing member having three access ways located an axial distance proximal the proximal ring the access way having an iris or lip seal, the sealing member releasably coupled to the proximal ring, and rotatable in view of Bimbo et al. so that a surgeon could use multiple instruments through one incision while maintaining a tight seal.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW YANG whose telephone number is (571)272-3472. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Yang/  
Examiner, Art Unit 3775  
11/26/08  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733